

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

MASTER CASE NO. C09-037 MJP

**DECLARATION OF NICHOLAS A.
JACKSON IN SUPPORT OF
DEFENDANTS' MOTION TO
PRECLUDE USE OF UNTIMELY
DISCLOSED EXPERT OPINIONS OF
IRA HOLT AND CHARLES D. COWAN
PURSUANT TO FED. R. CIV. P. 37(c)(1)**

*Declaration of Nicholas A. Jackson in Support
of Defendants' Motion to Preclude Use of
Untimely Disclosed Expert Opinions of Ira Holt and
Charles D. Cowan Pursuant to Fed. R. Civ. P. 37(c)(1)
(CV09-037 MJP)*

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 I, NICHOLAS A. JACKSON, hereby declare as follows under penalty of
2 perjury pursuant to 28 U.S.C. § 1746:

3 1. I am an attorney at law licensed to practice in the State of New York. I am
4 an associate of the firm of Cravath, Swaine & Moore LLP, counsel of record for
5 Defendants WaMu Asset Acceptance Corp. and WaMu Capital Corp. (collectively, the
6 “WaMu Defendants”) in this matter. I submit this declaration in support of Defendants’
7 Motion to Preclude Use of Untimely Disclosed Expert Opinions of Ira Holt and Charles
8 D. Cowan Pursuant to Fed. R. Civ. P. 37(c)(1). By virtue of my representation of the
9 WaMu Defendants in this matter, I have personal knowledge of the facts set forth below,
10 or knowledge based on information and belief, and could and would testify competently
11 to those facts if called to do so.

12 2. The Daubert Motion Declaration of Ira Holt, dated May 25, 2012 (Dkt.
13 425-1) and the Daubert Motion Declaration of Charles D. Cowan, dated May 25, 2012
14 (Dkt. 425-2), both state that Mr. Holt and his staff have purportedly re-underwritten
15 1,027 additional loans since March 2, 2012, the date of Mr. Holt’s expert report. To date,
16 Plaintiffs have not provided Defendants with any reports, data, or other information in
17 any form relating to the content or underlying basis of Ira Holt’s or Charles D. Cowan’s
18 purported opinions regarding these 1,027 additional loans. Plaintiffs also have not
19 provided Defendants with any information concerning which loans Mr. Holt has
20 reviewed since March 2, 2012 or which loans he has deemed defective.

21 3. According to Mr. Holt’s March 2, 2012 report, his re-underwriting review
22 was based on an online “survey” completed by staff working under his direction. (Expert
23 Report of Ira Holt, dated March 2, 2012, at 15 (Dkt. 407-1).) The responses to that
24 survey were contained in an Excel spreadsheet produced by Plaintiffs in connection with
25

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1 Mr. Holt's report, and included numerous references to certain "formula worksheets."
2 On March 13, 2012, Plaintiffs produced to Defendants 423 "formula worksheets" in
3 Excel format. Each of those spreadsheets contains information recorded and calculations
4 performed by Mr. Holt and/or his staff in connection with their review of particular loan
5 files.

6 4. I have reviewed the 423 formula worksheet files produced by Plaintiffs in
7 their original, unaltered format. All of the files contained metadata indicating the date
8 and time the file was first created. Many files also included a date as part of the filename.
9 The earliest date indicated by either the filename or the "date created" metadata of any of
10 the 423 files was February 2, 2012.

11 5. The Court's scheduling order provided for the exchange of initial expert
12 reports on February 28, 2012 and rebuttal reports on March 27, 2012. (Dkt. 335.)
13 Plaintiffs requested and Defendants agreed to extend those dates to March 2 and March
14 30, 2012, respectively, which had no impact on the deadlines for any Court filings.

15 6. Attached as Exhibit 1 is a true and correct copy of a letter from Matthew
16 S. Jackson to Joshua S. Devore, dated July 25, 2011, enclosing the initial production of
17 loan origination files in electronic form.

18 7. Attached as Exhibit 2 is a true and correct copy of a letter from Matthew
19 S. Jackson to Joshua S. Devore, dated September 10, 2011, enclosing the final production
20 of loan files in electronic form.

21 8. Attached as Exhibit 3 is a true and correct copy of a letter from Matthew
22 S. Jackson to Joshua S. Devore, dated September 6, 2011.

23 9. Attached as Exhibit 4 is a true and correct copy of a letter from Wes
24 Earnhardt to Plaintiffs' Counsel, dated March 14, 2012.

25
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Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 I hereby declare, under penalty of perjury under the laws of the United
2 States of America, that the foregoing is true and correct.

3 DATED this 7th day of June, 2012, at New York, New York.

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Nicholas A. Jackson

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1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Adam Zurofsky azurofsky@cahill.com

Amanda F. Lawrence alawrence@scott-scott.com

Anne L. Box abox@scott-scott.com

Barry Robert Ostrager bostrager@stblaw.com, managingclerk@stblaw.com

Bradley T. Meissner bradley.meissner@dlapiper.com

Brian O. O'Mara bo'mara@rgrdlaw.com, e_file_sd@rgrdlaw.com

Christopher E Lometti clometti@cohenmilstein.com

Daniel B Rehns drehns@cohenmilstein.com, efilings@cohenmilstein.com

Darren J Robbins e_file_sd@csgrr.com

David Daniel Hoff dhoff@tousley.com, efile@tousley.com

Douglas C McDermott doug@mcdermottnewman.com, eric@mcdermottnewman.com

Daniel Slifkin dslifkin@cravath.com

Edward C. Signaigo esignaigo@scott-scott.com

Evan R. Chesler echesler@cravath.com

Floyd Abrams fabrams@cahill.com

Gavin Williams Skok gskok@riddellwilliams.com, jsherred@riddellwilliams.com, lmoore@riddellwilliams.com

Geoffrey M Johnson gjohnson@scott-scott.com, efile@scott-scott.com

Hal D Cunningham hcunningham@scott-scott.com, efile@scott-scott.com, halcunningham@gmail.com

Hector J. Valdes hvaldes@cravath.com

Certificate of Service
(CV09-037 MJP)

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 Hollis Lee Salzman (Terminated) hsalzman@labaton.com,
2 ElectronicCaseFiling@labaton.com
3 James J. Coster jcoster@ssbb.com, jregan@ssbb.com, managingclerk@ssbb.com
4 Janissa Ann Strabuk jstrabuk@tousley.com, lrolling@tousley.com,
5 wcruz@tousley.com
6 Jason T Jasnoch jjasnoch@scott-scott.com, efile@scott-scott.com
7 Jesse M. Weiss jweiss@cravath.com
8 Joel P Laitman jlaitman@cohenmilstein.com
9 John D Lowery jlowery@riddellwilliams.com, dhammonds@riddellwilliams.com
10 John D. Pernick john.pernick@bingham.com
11 John T. Jasnoch jjasnoch@scott-scott.com
12 Jonathan Gardner jgardner@labaton.com
13 Joseph P Guglielmo jguglielmo@scott-scott.com, efile@scott-scott.com
14 Joseph A. Fonti (Terminated) jfonti@labaton.com, ElectronicCaseFiling@labaton.com
15 Joshua M. Rubins jrubins@ssbb.com, jregan@ssbb.com, managingclerk@ssbb.com
16 Joshua S. Devore jdevore@cohenmilstein.com, efilings@cohenmilstein.com
17 Julie Goldsmith Reiser jreiser@cohenmilstein.com
18 Julie Hwang (Terminated) jhwang@labaton.com, ElectronicCaseFiling@labaton.com
19 J. Wesley Earnhardt wearnhardt@cravath.com
20 Kenneth J Pfaehler kenneth.pfaehler@snrdenton.com, nicole.reeber@snrdenton.com
21 Kenneth M Rehns krehns@cohenmilstein.com
22 Kerry F Cunningham kerry.cunningham@dlapiper.com
23 Kevin P Chavous kchavous@sonnenschein.com
24 Kim D Stephens kstephens@tousley.com, cbonifaci@tousley.com,
25 lrolling@tousley.com, wcruz@tousley.com

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(CV09-037 MJP)

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 Larry Steven Gangnes gangnesl@lanepowell.com, docketingsea@lanepowell.com,
2 donnellyjoss@lanepowell.com, sebringl@lanepowell.com
3 Leslie D Davis ldavis@sonnenschein.com
4 Mary Kay Vyskocil mvyskocil@stblaw.com
5 Matthew B. Kaplan mkaplan@cohenmilstein.com, efilings@cohenmilstein.com
6 Michael A. Paskin mpaskin@cravath.com
7 Michael H. Barr mbarr@sonnenschein.com
8 Nancy A Pacharzina (Terminated) npacharzina@tousley.com, mhottman@tousley.com
9 Paul Scarlato pscarlato@labaton.com, ElectronicCaseFiling@labaton.com
10 Paul Joseph Kundtz pkundtz@riddellwilliams.com, mbergquam@riddellwilliams.com,
11 mdowns@riddellwilliams.com
12 Richard A Speirs rspeirs@cohenmilstein.com
13 Richard F Hans richard.hans@dlapiper.com, dorinda.castro@dlapiper.com
14 Robert D Stewart stewart@kiplinglawgroup.com
15 Rogelio Omar Riojas omar.riojas@dlapiper.com, karen.hansen@dlapiper.com,
16 nina.marie@dlapiper.com
17 Ryan Wagenleitner rwagenleitner@scott-scott.com
18 S Douglas Bunch dbunch@cohenmilstein.com
19 Serena Rich ardson (Terminated) srichardson@labaton.com,
20 ElectronicCaseFiling@labaton.com
21 Stellman Keehnel stellman.keehnel@dlapiper.com, patsy.howson@dlapiper.com
22 Stephen M. Rummage steverummage@dwt.com, jeannecadley@dwt.com,
23 seadocket@dwt.com
24 Steve W. Berman steve@hbsslaw.com, heatherw@hbsslaw.com, robert@hbsslaw.com
25 Steven J Toll stoll@cohenmilstein.com, efilings@cohenmilstein.com

Certificate of Service
(CV09-037 MJP)

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 Steven P Caplow stevencaplow@dwt.com, jasonSchattenkerk@dwt.com,
2 patrickwatts@dwt.com, seadocket@dwt.com, sheilarowden@dwt.com
3 Steven W Fogg sfogg@corrchronin.com, hpowell@corrchronin.com,
4 reception@corrchronin.com
5 Susan L. Hoffman susan.hoffman@bingham.com
6 Tammy Roy troy@cahill.com
7 Thomas G. Rafferty trafferty@cravath.com
8 Timothy Michael Moran moran@kiplinglawgroup.com, cannon@kiplinglawgroup.com
9 Walter W. Noss wnoss@scott-scott.com, efile@scott-scott.com
10 DATED this 7th day of June, 2012 at Seattle, Washington.

11 By: /s/ Louis D. Peterson
12 Louis D. Peterson, WSBA #5776
13 1221 Second Avenue, Suite 500
14 Seattle, WA 98101-2925
15 Telephone: (206) 623-1745
16 Facsimile: (206) 623-7789
17 Email: ldp@hcmp.com
18
19
20
21
22
23
24
25

Certificate of Service
(CV09-037 MJP)

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

Exhibit 1



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

matthew.jackson@sidley.com
(312) 853 0630

BEIJING
BRUSSELS
CHICAGO
DALLAS
FRANKFURT
GENEVA
HONG KONG
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WASHINGTON, D.C.

FOUNDED 1866

July 25, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is the initial production of loan origination files. The Bates range for this production is JPMWaMuMBSLF0000000001 - JPMWaMuMBSLF0000308706.

Regards,

A handwritten signature in black ink, appearing to read "Matthew S. Jackson".

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 2



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

matthew.jackson@sidley.com
(312) 853 0630

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BRUSSELS
CHICAGO
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GENEVA
HONG KONG
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LOS ANGELES

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PALO ALTO
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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

September 10, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is the twelfth production of loan origination files. The Bates range for this production is JPMWaMuMBSLF0007991587 - JPMWaMuMBSLF0008440993.

Regards,

A handwritten signature in black ink, appearing to read "Matthew S. Jackson".

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 3



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

matthew.jackson@sidley.com
(312) 853 0630

BEIJING
BRUSSELS
CHICAGO
DALLAS
FRANKFURT
GENEVA
HONG KONG
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NEW YORK
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SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

FOUNDED 1866

September 6, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is a production of loan underwriting guidelines. The Bates range for this production is JPMWaMuMBSUG0000000001 to JPMWaMuMBSUG0000287529.

Regards,

A handwritten signature in black ink that reads "Matthew S. Jackson".

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 4

CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA
825 EIGHTH AVENUE
NEW YORK, NY 10019-7475

TELEPHONE: (212) 474-1000
FACSIMILE: (212) 474-3700

CITYPOINT
ONE ROPEMAKER STREET
LONDON EC2Y 9HR
TELEPHONE: 44-20-7453-1000
FACSIMILE: 44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER

(212) 474-1138

MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
DARIN P. MCATEE
GARY A. BORNSTEIN
TIMOTHY G. CAMERON
KARIN A. DEMASI
LIZABETHANN R. EISEN
DAVID S. FINKELSTEIN
DAVID GREENWALD
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
JOEL F. HEROLD
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
TEENA-ANN V. SANKOORIKAL
ANDREW R. THOMPSON
DAMIEN R. ZOUBEK
LAUREN ANGELLILI

TATIANA LAPUSHCHIK
ERIC L. SCHIELE
ALYSSA K. CAPLES
JENNIFER S. CONWAY
MINH VAN NGO
KEVIN J. ORSINI
MATTHEW MORREALE
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA

SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
PAUL C. SAUNDERS

STUART W. GOLD
JOHN W. WHITE
EVAN R. CHESLER
MICHAEL L. SCHLER
RICHARD LEVIN
KRIS F. HEINZELMAN
B. ROBBINS KIESSLING
ROGER D. TURNER
PHILIP A. GELSTON
RORY O. MILLSON
RICHARD W. CLARY
WILLIAM P. ROGERS, JR.
JAMES D. COOPER
STEPHEN L. GORDON
DANIEL L. MOSLEY
PETER S. WILSON
JAMES C. VARDELL, III
ROBERT H. BARON
KEVIN J. GREHAN
STEPHEN S. MADSEN
C. ALLEN PARKER
MARC S. ROSENBERG
SUSAN WEBSTER
DAVID MERCADO

ROWAN D. WILSON
CHRISTINE A. VARNEY
PETER T. BARBUR
SANDRA C. GOLDSTEIN
THOMAS G. RAFFERTY
MICHAEL S. GOLDMAN
RICHARD HALL
JULIE A. NORTH
ANDREW W. NEEDHAM
STEPHEN L. BURNS
KEITH R. HUMMEL
DANIEL SLIFKIN
ROBERT I. TOWNSEND, III
WILLIAM J. WHELAN, III
SCOTT A. BARSHAY
PHILIP J. BOECKMAN
ROGER G. BROOKS
WILLIAM V. FOGG
FAIZA J. SAEED
RICHARD J. STARK
THOMAS E. DUNN
MARK I. GREENE
SARKIS JEBEJIAN
DAVID R. MARRIOTT

March 14, 2012

In re Washington Mutual Mortgage Backed Securities Litigation
No. 09-0037-MJP

Dear Counsel:

I write regarding the reports of Mr. Ira Holt (the "Holt Report") and Dr. Charles D. Cowan (the "Cowan Report"), which Plaintiffs served on March 2, 2012.

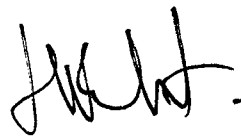
Under Federal Rule of Civil Procedure 26(a)(2), you were required to provide "a complete statement of all opinions [Mr. Holt and Dr. Cowan] will express and the basis and reasons for them" and "the facts or data considered by" Mr. Holt and Dr. Cowan in forming their opinions. You failed to do so, and have now forced us to spend 11 days (so far) asking and re-asking for information that we should have received on March 2. To wit:

- On March 3, you provided the backup data and materials for your Reports, despite indicating that you would provide them on March 2 to an FTP site provided by us. Notably, on March 2, we did provide to you via FTP all of the backup materials for all of Defendants' reports.
- On March 5, following two letters from Defendants setting out your disclosure obligations, you produced a PDF version of the "survey" that is at the heart of Mr. Holt's analysis. Only three days later, on March 8, did you produce the native version.
- On March 8, after a repeated request from Defendants, you belatedly produced the sample loan list generated by Dr. Cowan and provided to Mr. Holt. On March 11, again only after prompting by Defendants, you produced the sample loan lists as they were provided to Mr. Holt.
- On March 13, after yet another repeated request by Defendants, you produced 423 worksheets that evidenced the purported reunderwriting and analysis performed on the loans that Dr. Holt included in his report.

Your failure to produce these items on the agreed-upon date has prejudiced our experts' ability to respond to the Reports. The information produced after the deadline – in particular, the worksheets with substantive analysis of underwriting – is critically important to understanding the Reports.

There are now only 16 days left under the current schedule to analyze the information in the Holt and Cowan Reports. That is not the schedule to which the parties agreed. Accordingly, although Defendants will attempt to meet the disclosure deadline, we reserve the right for our experts to take an additional 11 days to respond to the Cowan and Holt Reports.

Very truly yours,



Wes Earnhardt

Joseph P. Guglielmo, Esq.
SCOTT + SCOTT
500 5th Avenue
New York, NY 10110

Anne Box, Esq.
SCOTT + SCOTT
707 Broadway, Suite 1000
San Diego, CA 9201

Josh Devore, Esq.
COHEN MILSTEIN SELLERS & TOLL
1100 New York Ave NW, Suite 500 West
Washington, DC 20005

BY EMAIL

Copy to:

John Pernick, Esq.
Bingham McCutchen
Three Embarcadero Center
San Francisco, CA 94111

BY EMAIL